

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HYMON AUGUSTA WALKER,	§	
TDCJ-CID NO. 1014857,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO. H-07-2665
	§	
STATE OF TEXAS,	§	
Respondent.	§	

OPINION ON DISMISSAL

Petitioner Hymon Augusta Walker, a state inmate incarcerated in the Texas Department of Criminal Justice–Correctional Institutions Division (“TDCJ-CID”), has filed a “Petition for Production of Transcript/Judicial Records.” (Docket Entry No.1). For the reasons to follow, the Court will deny petitioner’s request for the same.

On November 10, 2000, petitioner was sentenced to life imprisonment on his second conviction for sexual assault of a child by the 176th District Court of Harris County, Texas in cause number 835558. Texas Court website.¹ Petitioner’s conviction was affirmed in an unpublished opinion. *Walker v. State*, No. 10-01-037-CR (Tex. App.—Waco, October 9, 2002, no pet). Initially, petitioner did not file a petition for discretionary review (“PDR”). He later filed a state habeas corpus application on July 29, 2004 ,seeking to file an out-of-time PDR.² *Ex parte Walker*, Application No. AP-75273. The Texas Court of Criminal Appeals granted the application, in part, on October 26,

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www.10thcoa.courts.state.tx.us/opinions/HTMLOpinion.asp?OpinionID=4982;
www.14thcoa.courts.state.tx.us/opinions/case.asp?FilingID=81410.

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Deputy District Clerk of Harris County, Texas.

2005. *Ex parte* Walker, No.58,506-02, 2005 WL 2764199 (Tex. Crim. App. 2005).

Petitioner then filed an out-of-time PDR, which the Texas Court of Criminal Appeals refused on May 10, 2006. Texas Court website.³

Petitioner filed another state habeas application on November 20, 2006, which the Texas Court of Criminal Appeals denied without written order on the trial court's findings without a hearing on June 27, 2007. Texas Court website.⁴

Petitioner filed his petition for a federal writ of habeas corpus in this Court on August 7, 2007. In the pending petition, petitioner seeks an order compelling the state courts to provide him with a free copy of his state trial record. (Docket Entry No.1). Petitioner claims that he has newly discovered evidence showing that the specific DNA evidence admitted at trial was unreliable and that expert testimony regarding its reliability was tainted and perjured. He maintains that he is unable to show which testimony is perjured without a complete record; therefore, he seeks a court order directing the State of Texas to furnish him with a copy of all judicial records, transcripts, the prosecutor's files, and crime lab findings. (Docket Entry No.1).

Because petitioner does not seek federal habeas relief from his conviction or sentence in this court, but an order compelling state action with respect to state court records, the Clerk is ordered to re-designate this petition as a petition for leave to file a writ of mandamus. A writ of mandamus in federal district court authorizes the court to compel an officer of the United States to perform his duty. 28 U.S.C. § 1361. This Court

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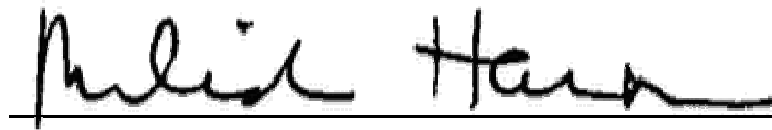
www.10thcoa.courts.state.tx.us/opinions/case.asp?FilingID=4398.

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does not have jurisdiction to issue a writ of mandamus against a state officer or a state court. Even against a federal officer, this remedy should only be used in exceptional circumstances. *Assoc. of American Medical Colleges v. Califano*, 569 F.2d 101, 110 n. 80 (D.C. Cir. 1977). Moreover, petitioner has not sought federal habeas relief on his state conviction in this Court; therefore, petitioner's request for a copy of his state court record is not ripe for consideration. Accordingly, petitioner's petition for leave to file a writ of mandamus is DENIED. Any and all pending motions are further DENIED.

SIGNED at Houston, Texas, this 28th day of August, 2007.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

Melinda Harmon
United States District Judge